

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID GOLDSTINE,

Plaintiff,

v.

FEDEX FREIGHT, INC., a Washington State
entity; "DOE(S) 1-100", employees of
FEDEX FREIGHT, INC.; and
CORPORATION(S) XYZ 1-100,

Defendants.

Case No. 2:18-cv-01164 MJP

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

BEFORE this Court is Plaintiff David Goldstine's Motion for Partial Summary
Judgment:

The Court having considered the following:

1. Plaintiff's Motion for Partial Summary Judgment;
2. Declaration of Ada K. Wong and the exhibits attached thereto;
3. Declaration of David Goldstine and the exhibits attached thereto;
4. Defendant's Opposition to Plaintiff's Motion for Partial Summary Judgment, if
any;

1 5. Plaintiff's Reply Re: Plaintiff's Motion for Partial Summary Judgment, if any;
2 The Court has considered the briefs of the parties, and has reviewed the pleadings and
3 records on file.

4 NOW THEREFORE, IT IS HEREBY ORDERED that

5 1. Plaintiff's Motion for Partial Summary Judgment is hereby GRANTED in its
6 entirety;

7 2. There exist no genuine issues of fact that are material to Defendant FedEx
8 Freight Inc.'s affirmative defenses as identified in Plaintiff's Motion for Partial
9 Summary Judgment:

10 a. Defendant FedEx Freight, Inc.'s first affirmative defense stating that
11 "Plaintiff's claims are barred, in whole or in part, for failure to state a claim
12 upon which relief may be granted" is stricken;

13 b. Defendant FedEx Freight, Inc.'s second affirmative defense stating that
14 "Plaintiff's allegations are barred, in whole or in part, by the applicable statute
15 of limitations and/or contractual limitations period" is stricken;

16 c. Defendant FedEx Freight, Inc.'s third affirmative defense stating that
17 "Some or all of Plaintiff's claims are barred because Plaintiff failed to exhaust
18 administrative remedies" is stricken;

19 d. Defendant FedEx Freight, Inc.'s fourth affirmative defense stating that
20 "Some or all of Plaintiff's claims are barred because they are outside the
21 scope of Plaintiff's administrative charge" is stricken;
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- 1 e. Defendant FedEx Freight, Inc.’s fifth affirmative defense stating that “The
2 Court lacks jurisdiction over any of Plaintiff’s claims outside the scope of his
3 administrative charge” is stricken;
- 4 f. Defendant FedEx Freight, Inc.’s sixth affirmative defense stating that
5 “Some or all of Plaintiff’s claims are barred because of the insufficient and/or
6 untimely filing and/or processing of his charge of discrimination with the
7 Washington State Human Rights Commission” is stricken;
- 8 g. Defendant FedEx Freight, Inc.’s seventh affirmative defense stating that
9 “Defendant has adopted anti-discrimination and anti-retaliation policies; has
10 made good faith efforts to educate its employees about these policies and
11 statutory prohibitions; has made good faith efforts to enforce these policies;
12 and has made good faith efforts to investigate and remedy any complaints
13 Plaintiff has raised” is stricken;
- 14 h. Defendant FedEx Freight, Inc.’s eighth affirmative defense stating that
15 “Defendant did not act with malice or reckless indifference to Plaintiff’s
16 protected rights” is stricken;
- 17 i. Defendant FedEx Freight, Inc.’s ninth affirmative defense stating that
18 “Plaintiff is not entitled to punitive damages” is stricken;
- 19 j. Defendant FedEx Freight, Inc.’s tenth affirmative defense stating “Without
20 admitting any of the allegations contained in the Complaint, FedEx avers that
21 to the extent the Complaint seeks punitive damages, it violates FedEx’s right
22 to procedural due process under the Fourteenth Amendment of the United
23 States Constitution and/or under the Constitution of the State of Washington;

it violates FedEx's right to protection from 'excessive fines' as provided in the Eighth Amendment to the United States Constitution and/or pertinent provisions of the Constitution of the State of Washington; and it violates FedEx's right to substantive due process as provided in the Fifth and Fourteenth Amendments to the United States Constitution and/or the Constitution of the State of Washington; and therefore, fails to state a cause of action supporting punitive damages" is stricken;

k. Defendant FedEx Freight, Inc.'s eleventh affirmative defense stating that "Plaintiff has failed to mitigate his damages" is stricken;

l. Defendant FedEx Freight, Inc.'s twelfth affirmative defense stating that "Plaintiff has failed to participate in the interactive process" is stricken;

m. Defendant FedEx Freight, Inc.'s thirteenth affirmative defense stating that "FedEx Freight reserves the right to assert additional or other defenses as discovery progresses" is stricken;

3. _____
_____.

IT IS SO ORDERED.

DATED this ____ day of _____, 2019.

THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

1 *Presented by:*

2 **AKW LAW, P.C.**

3 /s/ Ada K. Wong

4 Ada K. Wong, WSBA #45936
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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2019, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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Counsel for Defendant FedEx Freight, Inc.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 8th day of August, 2019.

/s/ Kaila A. Eckert

Kaila A. Eckert, Paralegal